

Gina Harrison
Director
Federal Regulatory Relations

1275 Pennsylvania Avenue, N.E.
Washington, D.C. 20004
(202) 383 6423

PACIFIC TELESIS
Group-Washington

September 13, 1995

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

William F. Caton
Acting Secretary
Federal Communications Commission
Mail Stop 1170
1919 M Street, N.W., Room 222
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Dear Mr. Caton:

Re: MM Docket No. 94-131 - Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service; PP Docket No. 93-253 - Implementation of Section 309(j) of the Communications Act - Competitive Bidding

On behalf of Pacific Telesis Enterprise Group and Cross Country Wireless Inc., please find enclosed an original and six copies of their "Opposition to and Comments on Petitions for Reconsideration" in the above proceeding.

Please stamp and return the provided copy to confirm your receipt. Please contact me should you have any questions or require additional information concerning this matter.

Sincerely,



Enclosure

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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SEP. 13 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

Amendment of Parts 21 and 74 of the)
Commission's Rules with Regard to)
Filing Procedures in the Multipoint)
Distribution Service and in the)
Instructional Television Fixed Service)

MM Docket No. 94-131

and)

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PP Docket No. 93-253

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OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION

Pacific Telesis Enterprise Group and Cross Country Wireless Inc. ("PTE and Cross Country") hereby oppose or comment on certain aspects of petitions for reconsideration of the Report and Order, adopted on June 15, 1995, in the above-captioned proceedings ("Report and Order"). PTE and Cross Country themselves filed a petition for reconsideration and clarification, but overall they support the Report and Order's comprehensive and effective resolution of numerous issues relating to the Multipoint Distribution Service ("MDS")^{1/} and the Instructional Television Fixed Service ("ITFS"). The thrust of the other petitions is similarly supportive of the Commission's general approach. The positions they urged on

^{1/} For purposes of this pleading, "MDS" refers to both single channel MDS stations and multichannel multipoint distribution service stations.

reconsideration are also in the nature of fine-tuning the Report and Order.

- I. WHILE THE INTERESTS OF THE ITFS SERVICE SHOULD BE REASONABLY ACCOMMODATED, THEY SHOULD NOT PREJUDICE THE BTA AUCTION PROCESS.

- A. The Basic Principles.

PTE and Cross Country are appreciative of the needs of educational institutions that are ITFS licensees. They are pleased to be excess capacity lessees with numerous ITFS licensees who are providing wonderful instructional services and with whom they are working to enhance those services. Moreover, their petition for reconsideration urged the Commission to rescind its decision to grant BTA authorization holders a right of first refusal for new ITFS lease agreements. We also support the position of United States Wireless Cable (Petition at 4) that the parties to excess capacity leases should be free to agree on the required assignability of such leases as part of the assignment of the licenses in question.

Further, PTE and Cross Country suggest that ITFS licensees should be permitted to adjust their facilities post-BTA auction, provided that the adjustments do not increase the power flux density beyond a set limit at the edge of their service areas,^{2/} thereby creating interference to (or having a preclusive effect on) the protected service area of the BTA

^{2/} Adoption of this proposal would bring the treatment of ITFS into line with the Commission's treatment of MDS -- an objective that we support.

authorization holder. Additional flexibility for ITFS licensees will undoubtedly be provided as a result of private-party negotiations between BTA authorization holders and ITFS licensees. BTA authorization holders will not wish to block the legitimate interests of local educational institutions.

But the Report and Order is also properly premised on other equities which serve the public interest. The frequencies in question have been available for ITFS licensing for many years. The Commission has even made available special filing windows for modified MDS and ITFS facilities on September 15 and for new and modified ITFS facilities on October 16-20. Surely, these arrangements will have provided incumbent MDS operators and present and prospective ITFS licensees with every reasonable opportunity to apply for whatever facilities they deem desirable.

Then an auction will be held for the spectrum unused or unprecluded by the then existing and applied-for ITFS and MDS facilities within the BTAs. As the Report and Order repeatedly emphasized, this will be swiss cheese spectrum.^{3/}

^{3/} The approach of auctioning a block of spectrum that is partially occupied by incumbent users is consistent with the Commission's successful PCS auctions, in which auction winners have access to a spectrum band within a specified geographic area subject to the preclusive effects of incumbent microwave users. It also is highly spectrum-efficient because it permits interstitial spectrum that otherwise might lie fallow to be put to important and effective uses. But this spectrum will be more difficult to utilize than PCS spectrum, given that auction winners, unlike PCS licensees, will have no right eventually to relocate the incumbent MDS and ITFS users and gain their spectrum rights.

It will not be terribly valuable and great ingenuity will be required to make it capable of sustaining a viable service. It should not be further burdened with the risk that, subsequent to the auction process, new or modified ITFS facilities could unilaterally change the technical parameters and potential value of the spectrum for which the BTA authorization holders have successfully bid.

As the Commission has also repeatedly noted, the key to successful auctions is certainty. Auction participants need to be able to rely on the availability of the spectrum on which they are bidding, even in this case with all of its gaps and constraints; in fact, even more so because of them. Then the BTA authorization holder must be able to design and construct its system in reliance on this same information, so as to maximize service consistent with the need to achieve economic viability. And time must be given to BTA authorization holders to implement, fine tune and, most importantly, supplement these initial construction and operational plans with subsequent facility construction and modification.

If ITFS licensees or anybody else can change or increase the spectrum/interference constraints under which the above-described process rolls out, the process will be compromised, bidder confidence will be undermined, auction revenues will be reduced, and the public disserved.

B. Bell Atlantic's Proposal.

Bell Atlantic's petition for reconsideration proposed a rational and fair methodology for dealing with these issues (although we would add to it the accommodations for ITFS described above, and other adjustments may be appropriate). Bell Atlantic proposed that the BTA auction winner would, within a specified time period, file with the Commission a blueprint of the interference and preclusion effects of existing licensees within its BTA service area. Then those licensees would be given a specified period to comment on and correct that "blueprint of constraints." After any resulting disputes were resolved, the BTA authorization holder would know the ground rules which it would have to observe in designing, constructing, operating, fine tuning, supplementing, and adjusting its system in the future, consistent with the rights of incumbents to effective interference protection. And, as a corollary, existing ITFS and MDS licensees and prospective new ITFS licensees would know that they could not propose new facilities or facility changes that would impinge on the BTA authorization holder's rights. The further refinement we would suggest to this proposal is that if there were disputes about certain aspects of the "blueprint of constraints," the BTA authorization holder would be free immediately to implement construction and operational plans that did not affect the matters in dispute.

C. Another Approach.

If the Commission does not adopt an approach along the lines of Bell Atlantic's recommendation at this time, we suggest a fall-back proposal. The BTA authorization holder would be given a period of twenty-four months from the time it received its BTA authorization to propose, in the form of applications, wireless cable facilities within its BTA. These would receive protection from any new or altered ITFS and MDS proposals during this period. At the end of the twenty-four month period, ITFS newcomers and incumbents could propose new or changed facilities, provided they afforded interference protection to 35-mile PSAs of the BTA authorization holder's existing or already applied-for facilities. However, during this twenty-four month period, incumbents could make modifications that comply with the power-flux density requirement or otherwise satisfy the Commission's interference protection requirements or that could be worked out cooperatively with the BTA authorization holder. After the twenty-four month period, priority would be given to applicants pursuant to the Commission's existing policies and regulations.

A period of twenty-four months after award of the BTA authorization is appropriate for this purpose, because BTA authorization holders will not be able to specify all of their construction plans immediately upon receipt of their authorization. Nor should they. They will want to evolve those plans, implement some of them, test their appropriateness in

the field, and then propose additional facilities to complement their first wave of wireless cable facilities.

While this process might have required less than twenty-four months in the past analog environment where propagation, interference and terrain effects could be predicted with relative certainty, the inauguration of digital makes it appropriate to set this period at no less than twenty-four months. Digital technology will not be available for extensive commercial implementation until the middle of next year. BTA authorization holders will want to evaluate the coverage and interference effects of their initial digital operations and then supplement and adapt their facilities to reflect newly-discovered realities. The twenty-four month period is necessary for this service-expansion and fine-tuning process to be effective. Obviously, it is in the public interest for BTA authorization holders to have a reasonable opportunity to expand and rationalize their service in this manner, rather than to design, apply for and build their full system immediately or otherwise run the risk of being precluded from building out their full system by intervening ITFS applications.

A strong case can be made that BTA authorization holders should have the flexibility provided for in our fall-back position for the full five-year build-out period -- which is part of Bell Atlantic's proposal. After all, it can be argued by analogy to cellular and PCS and on the basis of

logic that that is the purpose of a build-out period. However, PTE and Cross Country offer the twenty-four month proposal as a possible compromise solution.

II. THE RECONSIDERATION ISSUES MUST BE RESOLVED PRIOR TO THE START OF THE AUCTIONS.

Interests of fairness, enhancing auction revenues, and the roll-out of new wireless cable services all require that the issues raised on reconsideration, including those raised in our petition for reconsideration and clarification, be resolved prior to the launch of the bidding process. Bidders need to know in advance the rules of the game in order to bid rationally for MDS spectrum and to use it effectively.

PTE and Cross Country support auctions at the earliest possible date after sufficient information is made available to conduct fair and efficient auctions. The upcoming availability of these wireless cable frequencies on a new BTA-wide basis, will facilitate the further expansion of wireless cable service to the public and the competition benefits they will bring to the video marketplace. This will be so, even though this spectrum is handicapped by the preclusive effects of existing operations and pending applications. The transition to digital will also be facilitated by the availability of this spectrum through the auction process.

Accordingly, early completion of the auction process is in the public interest. But that auction process will proceed most effectively if participants know beforehand the technical parameters of existing facilities and pending

applications and know the extent to which spectrum within the BTAs for which they are bidding may be subject to future invasion by new or modified ITFS facilities and under what circumstances.

WHEREFORE, the Commission should act on reconsideration in these proceedings as requested in our earlier petition and as the views in that petition are supplemented herein.

Respectfully submitted,

CROSS COUNTRY WIRELESS INC. and
PACIFIC TELESIS ENTERPRISE GROUP

Bruce A. Ramsey /JLW
Bruce A. Ramsey
Kristin A. Ohlson
2410 Camino Ramon
Suite 300
San Ramon, California 94583

James L. Wurtz
Peggy Garber
1275 Pennsylvania Ave., N.W.
Suite 400
Washington, D.C. 20004

Jonathan D. Blake
Jonathan D. Blake
Lee J. Tiedrich
COVINGTON & BURLING
P.O. Box 7566
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044
(202) 662-6000

Their Attorneys

September 13, 1995

Certificate of Service

I, Christopher M. Petite, a legal assistant at the law offices of Covington & Burling, do hereby certify that on this 13th day of September, 1995, a copy of the foregoing "OPPOSITION TO AND COMMENTS ON PETITIONS FOR RECONSIDERATION" was served by U.S. First Class Mail, postage prepaid, to the following:

Paul J. Sinderbrand, Esq.
for The Wireless Cable Association
International, Inc.
Sinderbrand & Alexander
888 16th Street, N.W. 5th Floor
Washington, D.C. 20006

John D. Pellegrin, Esq.
for A/B Financial, Inc., et al.
Law Offices of John D. Pellegrin, Chartered
1140 Connecticut Avenue, N.W. Suite 606
Washington, D.C. 20036

Robert A. Woods, Esq.
Shwartz, Woods & Miller
1350 Connecticut Avenue, N.W. Suite 300
Washington, D.C. 20036

Thomas A. Pyle
Network for Instructional TV, Inc.
11490 Commerce Park Drive Suite 110
Reston, Virginia 22091

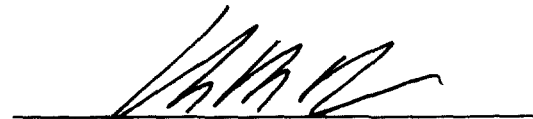
Thomas J. Dougherty, Jr., Esq.
for American Telecasting, Inc.
Gardner, Carton & Douglas
1301 K Street, N.W.
East Tower, Suite 900
Washington, D.C. 20005

John T. Scott, III, Esq.
for Bell Atlantic Corporation
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

John T. Scott, III, Esq.
for Trans Video Communications, Inc.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Wayne Coy, Jr., Esq.
for The National ITFS Association
Cohn & Marks
1333 New Hampshire Avenue, N.W. Suite 600
Washington, D.C. 20036

James A. Stenger, Esq.
for United States Wireless Cable, Inc.
Ross & Hardies
888 16th Street, N.W. Suite 400
Washington, D.C. 20006


Christopher M. Petite
Legal Assistant